

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>CAROLYN CLINE</b>	)	
Claimant	)	
VS.	)	
	)	
<b>THE BOEING COMPANY</b>	)	Docket No. 216,725
Respondent	)	
AND	)	
	)	
<b>INS. COMPANY STATE OF PENNSYLVANIA</b>	)	
<b>IN CARE OF AMERICAN INTERNATIONAL GROUP</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent requested the Appeals Board to review the June 24, 1997, preliminary hearing Order entered by Administrative Law Judge John D. Clark.

**ISSUES**

Respondent raised the following issues for Appeals Board review:

- (1) Whether claimant suffered an accidental injury that arose out of and in the course of his employment with respondent.
- (2) Whether claimant is in current need of medical treatment.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

The first issue raised by respondent is an issue listed in K.S.A. 1996 Supp. 44-534a that grants the Appeals Board jurisdiction to review a preliminary hearing order.

(1) Claimant requested medical treatment and temporary total disability compensation benefits for an alleged work-related neck injury. She claimed her regular work activities from June 1996 through September 17, 1996, and from March 19, 1997, through May 13, 1997, aggravated a previous neck condition resulting in her need for surgical intervention. In contrast, respondent contends that claimant's current neck complaints and need for surgery are the result of a significant previous neck condition not related to her work.

After hearing the testimony of claimant and reviewing the medical records admitted into evidence at the preliminary hearing, the Administrative Law Judge found claimant had suffered a new work-related injury in March 1997. He ordered respondent to pay medical expenses, authorized Paul S. Stein, M.D., as the authorized physician to treat claimant, and ordered temporary total disability compensation paid from May 13, 1997, until claimant is released to return to work.

The preliminary hearing record contains evidence that claimant had a long history of chronic neck pain dating back to the late 1980's. Furthermore, claimant had previous work-related bilateral shoulder injuries and a right carpal tunnel syndrome injury in 1991. Both of those injuries were surgically repaired. Claimant settled those injuries in a settlement hearing on February 10, 1994, for a lump sum amount of \$22,000 based upon permanent functional impairment rating to the whole body in the amount of 11.5 percent. The settlement hearing transcript was admitted into evidence at the preliminary hearing.

In addition, claimant suffered a head injury in a nonwork-related automobile accident in 1994 and broke her left wrist in another automobile accident in January 1997. Claimant testified that neither the automobile accidents nor her work-related injuries in 1991 caused increased symptoms in her neck. Claimant claims she first started to have increased symptoms in her neck while she was performing the skin polishing job in the summer of 1996. This was a light duty job that respondent returned claimant to following her 1991 injuries. At that time, claimant reported the increased symptoms to respondent who referred her to Robert L. Eyster, M.D. Dr. Eyster saw claimant on two occasions in September 1996, diagnosing a chronic irritation from degenerative disc disease in the neck. Dr. Eyster did not relate claimant's problem to her work. He returned claimant to work with restrictions of 25 pounds for a single lift, repetitive lifting limited to 15 pounds, no pushing or pulling with the upper extremities, and no repetitive work requiring to look overhead.

Claimant was then involved in an automobile accident in January 1997. She suffered a broken left wrist in that accident. Claimant returned to work in March 1997. Respondent did not return claimant to the skin polishing job even though her restrictions remained the same. She was returned to a housekeeping job, which required her to sweep, mop, and pick up trash. Claimant testified her neck became more symptomatic because

of the sweeping activities. She reported this increased pain to respondent who referred her to Bernard T. Poole, M.D. Dr. Poole saw her once on April 17, 1997, and diagnosed the patient with major depressive illness and chronic pain syndrome. Dr. Poole did not recommend any treatment and returned claimant to her regular employment without work restrictions.

Because of the increased pain, claimant went on her own to a neurosurgeon, Paul S. Stein, M.D. Dr. Stein first saw claimant on May 6, 1997, with claimant relating to him a history that in April she had an exacerbation of her neck problem which caused severe pain down her right arm. Dr. Stein had claimant undergo a myelogram and a post-myelogram CT scan which revealed degenerative changes at C5, C6, and C7. Claimant related to Dr. Stein that her neck problem was causing an intolerable influence with her life. On May 30, 1997, Dr. Stein performed a C6-7 anterior discectomy and fusion.

The Appeals Board finds that the preliminary hearing Order of the Administrative Law Judge should be affirmed. The Appeals Board concludes that claimant has presented persuasive evidence through her testimony and the medical records of her treating physician that proved her work activities aggravated her preexisting neck condition.

Where a worker's preexisting condition is either aggravated or accelerated by a subsequent work-related injury, the resulting injury is compensable. See Claphan v. Great Bend Manor, 5 Kan. App.2d 47, 611 P.2d 180, *rev. denied* 228 Kan. 806 (1980).

(2) Whether claimant is in need of medical treatment is not an issue that the Appeals Board has jurisdiction to review from a preliminary hearing order. See K.S.A. 1996 Supp. 44-534a.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge John D. Clark, dated June 24, 1997, should be, and is hereby, affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 1997.

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BOARD MEMBER

c: Tom E. Hammond, Wichita, KS  
Eric K. Kuhn, Wichita, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director